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December 20, 2004

**BY HAND DELIVERY**

Mr. Lawrence H. Norton  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: MUR 5585**

Dear Mr. Norton:

On behalf of Representative Nancy Pelosi, we write to respond to the complaint in the above-referenced matter. The complaint alleges no specific facts that, if proven true, would present a violation by Representative Pelosi. Accordingly, the Commission should dismiss the complaint summarily.

**I. FACTUAL DISCUSSION**

The complaint alleges violations arising from recorded telephone calls that were distributed in the fall of 2004, and that contrasted the positions of Democratic and Republican House candidates on issues, including the national sales tax. The complaint does not clearly allege how many districts received the calls. It cites undocumented "reports" to claim that such calls had been made in 39 districts, *see* Compl. ¶ 14. Elsewhere, it alleges that the calls were made with respect to "at least 28 Republican candidates for Congress." Compl. at 1. It alleges specific facts to show that the calls were made in 11 districts. *See* Compl. ¶¶ 11-12, 16; Exhibits 1, 7-10.

The complaint alleges facts linking the telephone calls to two commercial vendors: ITC Research and USA Public Opinion Group. *See* Complaint ¶¶ 11-12, 20; Exhibits 1-2, 7-8, 10. It alleges no specific facts linking the calls to anyone else.<sup>1</sup> It alleges no facts to show who paid for the calls; indeed it seems to suggest that the vendors sponsored the

<sup>1</sup> It lists a company called Survey USA and an individual named Fred R. Bierman among the respondents, and then mentions neither again. *See* Compl. ¶¶ 4-5.

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2004 DEC 21 A 11: 20

26044150439

December 20, 2004

Page 2

calls on their own and should have registered as political committees as a result. *See* Compl. ¶¶ 1-6. Finally, it alleges no specific facts to show any coordination between the sponsors of the call and anyone else.

The body of the complaint mentions Representative Pelosi twice. First, the complaint broadly alleges that Representative Pelosi conspired to make the calls, while promising more "detail" to support this allegation:

Respondent Nancy Pelosi is a member of the United States Congress. By information and belief, Petitioner believes Respondent Nancy Pelosi is informed of efforts by the other listed Respondents to violate the FECA, and is conspiring with the other Respondents and other persons to cause telephone bank public communications to occur without the required disclaimer and by conspiring to avoid registration with the Commission of political committees, in order to influence the election for President of the United States and of certain Democrat *[sic]* candidates to the United States Congress, as described in more detail in this Complaint.

Compl. ¶ 7. The promised "detail" never comes. When the complaint next mentions Representative Pelosi in paragraphs 18 and 19, it alleges no specific facts linking her to the calls. Rather, it alleges simply that she spoke out against the national sales tax in her capacity as an officeholder, and stated her intent to use the issue against Republicans running for Congress:

Respondent Nancy Pelosi has repeatedly criticized the National Sales Tax Plan as "a burden to middle class Americans, but a boon to the wealthy." In support of this statement, attached to this Complaint as "Exhibit 4" is a true and correct copy of a website statement from the Office of the House Democratic Leader Nancy Pelosi making such statement. Respondent Nancy Pelosi has also attempted to bring national focus to the national sales tax issue by causing the release of a report by the Democratic staff of the House Ways and Means Committee that is critical of the plan. In support of this statement, attached as "Exhibit 5" is a true and correct copy of an article from The State.com, posted Friday, September 24, 2004, wherein Respondent Pelosi is reported as released such report *[sic]* ...

Respondent Pelosi has also publicly stated that she will use the National Sales Tax Plan as a tool to target several Republican Congressional incumbents for defeat, including Congressmen: Max Burns of Georgia (GA 12); Philip Crane (IL 8); John Hostettler (IN 8); Rob Simmons (CT-2); Heather Wilson (NM 1); Charles Taylor

26044150440

December 20, 2004

Page 3

(NC 12); and Jim Gerlach (PA 6) and Anne Northrup (see paragraphs 12 and 13 above). In support of this statement, attached as "Exhibit 6" is a true and correct copy of "Congress Daily/PM" published by National Journal, dated October 1, 2004, which states that Pelosi will oppose the above mentioned Republican members of Congress using the National Sales Tax Plan as an issue.

Compl. ¶¶ 18-19.

The complaint's last reference to Representative Pelosi comes in the "Legal Analysis" section. Here, the sparse legal and factual bases of the charges against her are neatly summarized:

The well-know *[sic]* and stated objective of Respondent Nancy Pelosi to attack incumbent Republican Congressman *[sic]* on the National Sales Tax issue ... is evidence that strongly suggests that [she and other] ... Respondents are participating in a conspiracy to violate 2 U.S.C. Section 441(d) and 2 U.S.C. Section 431(4)(5)(6) *[sic]* of the Federal Election Campaign Act.

Compl. at 12-13.

The exhibits add no further facts relevant to the complaint's allegations against Representative Pelosi. Exhibit 4 presents a press release issued by Representative Pelosi's office in which she explains her opposition to a national sales tax. Exhibit 5 describes a news conference in which Representative Pelosi and other Members of Congress state their opposition to the national sales tax. Exhibit 6 quotes Representative Pelosi discussing the outlook for the 2004 Congressional elections. She says not only that Democrats were likely to target Republicans for their support of the national sales tax, but that "Democrats would win on issues such as jobs, health care, the environment, veterans and small business."

In the end, the complaint presents no specific facts to suggest that Representative Pelosi had anything to do with the phone calls. In fact, neither she nor any of her agents knew about the calls, or had anything to do with them in any way.

## II. LEGAL ANALYSIS

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would actually constitute a violation. See Commissioners Mason, McDonald, Sandstrom, Smith, Thomas and Wold,

26044150441

December 20, 2004

Page 4

Statement of Reasons, MUR 5141; Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960.

Complaints not based upon personal knowledge should identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. *See* Statement of Reasons, MUR 4960. Unwarranted legal conclusions from asserted facts are not accepted as true. *See id.* Purely speculative charges do not form an adequate basis to find reason to believe that a violation has occurred. *See id.*

The Commission has applied these principles to dismiss summarily several complaints like the one here. For example:

- When it dismissed MUR 4960, the Commission did not credit general allegations that third parties had paid for the costs of Senator Hillary Rodham Clinton's move from Washington, D.C., to Chappaqua, N.Y. *See* Statement of Reasons, MUR 4960. The Commission termed the allegations "purely speculative." *Id.*
- When it dismissed MUR 5136, the Commission did not accept a claim of coordination between Gore/Lieberman, Inc., and the AFL-CIO over a newspaper advertisement that referred to George W. Bush before the 2000 election. *See* First General Counsel's Report, MUR 5136. The Commission described the elements of coordination as defined at the time, observed that the complaint had not alleged facts to support the presence of any of those elements, and noted that the Gore/Lieberman campaign had denied through counsel any involvement in the advertisement. *See id.* at 7.
- When it dismissed the principal allegation of MUR 5304, the Commission did not credit allegations that Congressional candidate Dennis Cardoza "conspired with state Democratic leaders and the Latino Political Action Committee to launder money from Cardoza's non-Federal assembly campaign fund into his federal congressional campaign fund." First General Counsel's Report, MUR 5304, at 3-4 (quoting Complaint, MUR 5304, at 3). The Commission held that the "only facts provided by Complainant, derived from public disclosure records, show a series of contributions between respondents that are legal on their face." First General Counsel's Report, MUR 5304, at 8-9.

These same principles warrant summary dismissal of the complaint here:

*First*, like the complaint in MUR 4960, this complaint is premised entirely on "purely speculative" allegations. Statement of Reasons, MUR 4960. It alleges a conspiracy

26044150442

December 20, 2004

Page 5

among Representative Pelosi and the sponsors of the phone calls. *See* Compl. ¶ 7. Yet the only basis offered for further investigation is that Representative Pelosi spoke out publicly against the national sales tax, and suggested that it would be a winning issue for Democratic House candidates. *See* Compl. ¶¶ 18-19.

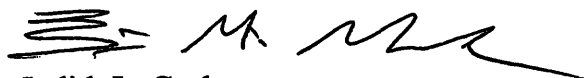
*Second*, like the complaint in MUR 5136, this complaint alleges none of the necessary elements of coordination. It does not allege that the calls referred to Representative Pelosi or her opponent, or were directed to voters in her Congressional district. *See* 11 C.F.R. 109.21(c). It does not allege that she coordinated the calls while acting on behalf of a Democratic party committee. *See* 11 C.F.R. 109.21(a), (d). The complaint does not allege that she or anyone acting on her behalf engaged in any conduct that might result in coordination under Commission rules. *See id.* 109.21(d)(1)-(5).

*Third*, as in MUR 5304, the conduct ascribed to Representative Pelosi by the complaint is legal on its face. Once stripped of its legal conclusions and speculative charges, the complaint shows only that she opposed the national sales tax, and that she indicated that Democrats would use the issue against Republicans in the election. Such transactions are "legal on their face" and provide no basis for investigation. *See* First General Counsel's Report, MUR 5304, at 8-9. It would raise the gravest First Amendment concerns to commence an investigation against a Congressional leader solely on the basis of her advocacy on an important national issue.

In short, as to Representative Pelosi, the complaint does not meet the standard for further Commission consideration. It relies entirely on speculative and conclusory allegations to connect her to the phone calls. It alleges no coordination between her and the sponsors of the calls. Indeed, it alleges no specific conduct by her that would violate any law.

For these reasons, the Commission should summarily dismiss the complaint.

Very truly yours,



Judith L. Corley

Brian G. Svoboda

Counsel to Representative Pelosi

26044150443